

SUMMARY OF PROPOSED FLOOR DRAFT:

**BILL 43 (2021)
RELATING TO AMPLIFIED SOUND IN WAIKIKI.**

The **PROPOSED FD1** makes the following amendments to the as-introduced version of Bill 43 (2021):

A. In SECTION 1 of the bill:

1. Adds the purpose of protecting public health and safety; and
2. Adds new findings (3) through (7) in support of the sound level restrictions as follows, and renumbers subsequent findings accordingly:
 - "(3) Disturbing, excessive, or offensive noise interferes with a person's right to enjoy life and property and has multiple adverse effects, detrimental to the public health and safety, including annoyance, interference with communication, sleep disturbance, and hearing impairment;
 - (4) The State of Hawaii Community Noise Control Code (Hawaii Administrative Rules, Section 11-46-4), establishes the maximum permissible sound level from stationary sources for all zoning districts of 70 decibels;
 - (5) The occupational sound exposure standard set by the National Institute for Occupational Safety and Health ("NIOSH") to protect workers against material hearing loss is 85 decibels over eight hours,¹ and the limit for the average exposure to environmental noise set by the U.S. Environmental Protection Agency ("EPA") to protect the public against hearing loss is 70 decibels over 24 hours;²
 - (6) Accounting for ambient street noise in Waikiki and potential exposures to amplified noise up to 10 evening and early morning hours per day, uninvited noises above 80 decibels are potentially annoying and may risk the health, safety, and welfare of listeners;

¹ These measures were based on the A-weighting frequency response. The NIOSH measure also assumes an effective quiet (i.e., below 70 decibels) for the other 16 hours in a workday. *Criteria for a recommended standard: occupational noise exposure*, U.S. Department of Health and Human Services (NIOSH) Publication Number 98-126 (1998), available online: <https://www.cdc.gov/niosh/docs/98-126/>.

² The EPA identified levels of 55 decibels outdoors and 45 decibels indoors as the highest average levels of noise that will permit spoken conversation, sleeping, working, and recreation. These are average levels, not peak levels. *Information on levels of environmental noise requisite to protect public health and welfare with adequate margin of safety*, U.S. Environmental Protection Agency, ONAC, 550/9-74-004, available online: <https://www.nonoise.org/library/levels74/levels74.htm>.

- (7) Limiting amplified sound from public sidewalks during nighttime hours to 80 decibels, measured from a distance no farther than 8 feet from the sound amplifier, would benefit Waikiki residents and visitors by preventing noise disturbances that could adversely affect their health, welfare, and privacy."

B. In SECTION 2 of the bill:

1. Amends the definition of "noise disturbance":
 - (a) To include any sound that:
 - (i) "Annoys or disturbs a person of normal sensitivities at a distance of 30 feet or more from the sound amplifier"; and
 - (ii) "Exceeds 80 decibels continuously for a combined total of one minute in any five minute period, measured from a distance no farther than 8 feet from the sound amplifier"; and
 - (b) To delete any sound that "[e]ndangers or injures the health of humans."
2. Adds definitions of "detached dwelling," "hotel," and "multi-family dwelling," all being defined in reference to the definitions of those terms in the Land Use Ordinance.
3. Amends the prohibition to include a geographic restriction of "within 30 feet of a hotel, a detached dwelling (one- or two-family), or a multi-family dwelling in Waikiki" and a time restriction of "between the hours of 7:00 p.m. of one day and 6:00 a.m. of the following day."
4. Amends the provision establishing prima facie evidence of a violation to include "[t]he playing, use, or operation of a sound amplifier in such a manner or at such a volume as to be audible at a distance of 30 feet or more from the sound amplifier or as to exceed a decibel limit of 80 decibels continuously for a combined total of one minute in any five minute period, measured from a distance no farther than 8 feet from the sound amplifier."

C. Makes miscellaneous technical and nonsubstantive amendments.



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RELATING TO AMPLIFIED SOUND IN WAIKIKI.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose and findings. The purpose of this ordinance is to preserve the tranquility of Waikiki against noise disturbances by regulating amplified sound from public property in that area.

The Council finds that:

- (1) Waikiki is a permanent home for thousands of local residents and a temporary home to hundreds of thousands of Oahu visitors every year. Both these residents and visitors have a reasonable expectation of privacy in, and of the enjoyment of, their homes (whether temporary or permanent);
- (2) As a densely inhabited and bustling area, Waikiki experiences street and other white noise; however, such noise is different from the excessively loud amplified sounds emanating from public sidewalks that can be heard by Waikiki residents and visitors within their homes and accommodations at all times of the day and night;
- (3) Disturbing, excessive, or offensive noise interferes with a person's right to enjoy life and property and has multiple adverse effects, detrimental to the public health and safety, including annoyance, interference with communication, sleep disturbance, and hearing impairment;
- (4) The State of Hawaii Community Noise Control Code (Hawaii Administrative Rules, Section 11-46-4), establishes the maximum permissible sound level from stationary sources for all zoning districts of 70 decibels;
- (5) The occupational sound exposure standard set by the National Institute for Occupational Safety and Health ("NIOSH") to protect workers against material hearing loss is 85 decibels over eight hours, and the limit for the average exposure to environmental noise set by the U.S. Environmental Protection Agency ("EPA") to protect the public against hearing loss is 70 decibels over 24 hours;



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- (6) Accounting for ambient street noise in Waikiki and potential exposures to amplified noise up to 10 evening and early morning hours per day, uninvited noises above 80 decibels are potentially annoying and may risk the health, safety, and welfare of listeners;
- (7) Limiting amplified sound from public sidewalks during nighttime hours to 80 decibels, measured from a distance no farther than 8 feet from the sound amplifier, would benefit Waikiki residents and visitors by preventing noise disturbances that could adversely affect their health, welfare, and privacy;
- (8) The First Amendment right to freedom of speech is a hallmark of our constitutional protections. This cherished freedom, however, does and should have limits. A person's right to free speech must be balanced with the right of the recipient not to listen. This concept, which is often referred to as the "captive audience" doctrine, was first recognized by the United States Supreme Court ("Supreme Court") in Kovacs v. Cooper, 336 U.S. 77 (1949). In Kovacs, the Supreme Court upheld the conviction of a person violating an ordinance that prohibited the use of sound trucks that emitted "loud and raucous" noises on city streets, thus establishing the rights of the intended recipients of protected speech to avoid having speech forced upon them;
- (9) The Supreme Court has made it clear that a city may appropriately regulate amplified sound as long as the regulation is content-neutral, narrowly tailored to promote a significant governmental interest, and leaves open ample alternative channels of expression. Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). Reasonable municipal ordinances regulating amplified sound have been upheld by courts throughout the United States. See: LaVelle v. City of Las Vegas, Nevada, 447 F. Supp. 3d 1015 (D. Nev. 2020); Rosenbaum v. City and County of San Francisco, 484 F.3d 1142 (9th Cir. 2007); and Nylen v. City of Grand Rapids, 475 F. Supp. 3d 744 (W.D. Mich. 2019); and
- (10) It is necessary to reasonably regulate the use of sound-amplifying devices on public sidewalks in Waikiki in order to protect the peace, tranquility, and health of Waikiki residents and visitors and to safeguard their constitutional rights to privacy and freedom from having excessively loud amplified sounds forced upon them in their homes and visitor accommodations.



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SECTION 2. Chapter 41, Revised Ordinances of Honolulu 1990 ("Regulated Activities Within the City"), is amended by adding a new article to be appropriately designated by the Revisor of Ordinances and to read as follows:

"Article __. Amplified Sound in Waikiki

Sec. 41-__.1 Definitions.

For the purposes of this article, the following definitions apply unless the context clearly indicates or requires a different meaning:

"Amplified sound" means any sound created by the use of a sound amplifier.

"Director" means the director of the department designated by the mayor to implement this article.

"Detached dwelling" means the same as defined in Section 21-10.1.

"Enforcement officer" means an officer of the Honolulu police department or any subordinate of the director designated to enforce this article.

"Hotel" means the same as defined in Section 21-10.1.

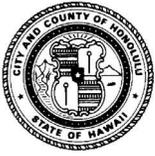
"Multi-family dwelling" means the same as defined in Section 21-10.1.

"Noise disturbance" means any sound that:

- (1) Is unreasonably loud or disturbing;
- (2) Annoys or disturbs a person of normal sensitivities at a distance of 30 feet or more from the sound amplifier; or
- (3) Exceeds 80 decibels continuously for a combined total of one minute in any five minute period, measured from a distance no farther than 8 feet from the sound amplifier.

"Public sidewalk" means a publicly owned or maintained "sidewalk" as defined in Section 29-1.1.

"Sound amplifier" means a device used for the reproduction or amplification of sound, including but not limited to, a microphone, loudspeaker, phonograph player,



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compact disc player, tape deck, smartphone, tablet, laptop computer, or musical instrument.

"Waikiki" means the Waikiki special district, as described in Section 21-9.80-2.

Sec. 41-__2 Restrictions on amplified sound in Waikiki.

Notwithstanding Section 41-31.1, it is unlawful for any person to play, use, operate, or permit to be played, used, or operated, on a public sidewalk, a sound amplifier that is within 30 feet of a hotel, a detached dwelling (one- or two-family), or a multi-family dwelling in Waikiki in such a manner as to create a noise disturbance between the hours of 7:00 p.m. of one day and 6:00 a.m. of the following day. The playing, use, or operation of a sound amplifier in such a manner or at such a volume as to be audible at a distance of 30 feet or more from the sound amplifier or as to exceed 80 decibels continuously for a combined total of one minute in any five minute period, measured from a distance no farther than 8 feet from the sound amplifier, shall be prima facie evidence of the creation of a noise disturbance.

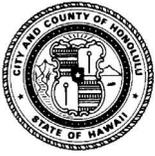
Sec. 41-__3 Exemptions.

The following are exempt from the prohibition in Section 41-__.2:

- (1) Activities of the city, State, or the United States;
- (2) Amplified sound emissions:
 - (A) To alert persons to the existence of a public or personal emergency; or
 - (B) In the performance of emergency work; and
- (3) Any parade or activity for which a permit has been issued under Chapter 15, Article 24, or that is exempt from obtaining such a parade or activity permit under Section 15-24.20(b).

Sec. 41-__4 Administration—Rules.

- (a) The mayor is authorized to designate the department that shall administer this article.
- (b) The department may adopt rules in accordance with HRS Chapter 91 to implement this article.



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Sec. 41-___.5 Penalty.

- (a) Civil Penalty. An enforcement officer who finds that a person is in violation of this article may serve the person with a notice of violation and request the person to cease the violation. If the person refuses to cease the violation, the enforcement officer may serve the person with a notice of order imposing a civil fine of up to \$100 for a first violation within a one-year period or up to \$250 for a second or subsequent violation within a one-year period from the first violation.
- (b) Criminal Penalty. Any person violating Section 41-___.2 shall, upon conviction, be punished:
 - (1) By a fine of \$100 for the first violation within a one-year period;
 - (2) By a fine of \$250 for a second violation within the one-year period from the first violation; or
 - (3) By a fine of not less than \$500, nor more than \$1,000, forfeiture of the sound amplifying device, and imprisonment not exceeding 30 days, or any combination of the foregoing penalties, if the violation occurred within one year of the occurrence of two or more previous violations by the person.
- (c) The "one-year period" commences for purposes of subsection (a) on the date of the enforcement officer's issuance of a notice of order; and for purposes of subsection (b) on the date of conviction for the first violation, and ends (for both subsections (a) and (b)) on the same day and month of the following calendar year.

Sec. 41-___.6 Enforcement.

Upon finding probable cause to believe that a violation of this article has occurred, any police officer may arrest or issue a summons and citation in compliance with HRS Section 803-6(b) to the person believed to have violated this article."

SECTION 3. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.



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SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

Tommy Waters

DATE OF INTRODUCTION:

November 3, 2021

Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

RICK BLANGIARDI, Mayor
City and County of Honolulu